

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Respondent/Plaintiff,

v.

RAHEEM SEAWRIGHT,

Petitioner/Defendant.

Case No. 2:17-cr-00240-KJD-CWH-1
No. 2:20-cv-01152-KJD

ORDER

Presently before the Court is Movant's Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody (#54). The government filed a Motion for Leave to Advise the Court of Legal Developments Relevant to Defendant's Motion to Vacate Sentence (#55) and Movant did not reply.

I. Factual and Procedural Background

Movant Raheem Seawright ("Seawright" or "Defendant") was convicted on his guilty plea of unlawful possession of a firearm by a previously convicted felon. He now requests that the Court vacate his sentence under 28 U.S.C. § 2255, asserting that his indictment and subsequent conviction are invalid.

Seawright has a lengthy criminal history, dating back to 2002 at age 20. Seawright has been charged with various crimes, including burglary, assault, and at least two robberies. (PSR). In 2008, after pleading guilty to robbery, he was sentenced to 7 to 14 years in prison. Id.

After that conviction, Seawright was indicted by a grand jury and charged with one count for felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Pursuant to a written plea agreement, Seawright plead guilty. He was sentenced to 23 months' imprisonment. His signed plea agreement stated that (1) he knowingly possessed a firearm; (2) at the time he possessed that firearm he had previously been convicted of a crime punishable by a term of imprisonment

1 exceeding one year; and (3) if he elected to go to trial instead of pleading guilty, the United
2 States could prove his guilt beyond a reasonable doubt. (#43).

3 Seawright now argues that the indictment was defective because it failed to describe the
4 criminal conduct which deprived this Court of jurisdiction. (#54). Seawright further alleges that
5 the “defect” in his indictment violated his Fifth and Sixth Amendment rights. Id.

6 I. Legal Standard

7 28 U.S.C. § 2255 allows a federal prisoner to seek relief under four grounds: (1) “the
8 sentence was imposed in violation of the Constitution or laws of the United States;” (2) “the
9 court was without jurisdiction to impose such a sentence;” (3) “the sentence was in excess of the
10 maximum authorized by law;” and (4) the sentence is “otherwise subject to collateral attack.” 28
11 U.S.C. § 2255(a).

12 Under 18 U.S.C. § 922(g), it is “unlawful for any person” who falls within one of nine
13 enumerated categories to “possess in or affecting commerce any firearm or ammunition.”
14 Section 924(a)(2) sets out the penalties applicable to “[w]however knowingly violates” § 922(g).
15 Before June 2019, courts treated the knowledge requirement in § 924(a)(2) as applying only to
16 the defendant’s possession of a firearm or ammunition, not to the fact that he fell within the
17 relevant enumerated category. But on June 21, 2019, the Supreme Court issued its decision in
18 Rehaif v. United States, 139 S. Ct. 2191 (2019), holding that a defendant’s knowledge “that he
19 fell within the relevant status (that he was a felon, an alien unlawfully in this country, or the
20 like)” is an element of a § 922(g) offense. Id. at 2194. This decision applies to all § 922(g)
21 categories, including felons under § 922(g)(1). A felon is one who has been convicted of a crime
22 punishable by more than one year of imprisonment.

23 In Rehaif, the Supreme Court stated:

24 The question here concerns the scope of the word “knowingly.”
25 Does it mean that the Government must prove that a defendant knew
26 both that he engaged in the relevant conduct (that he possessed a
27 firearm) and also that he fell within the relevant status (that he was
28 a felon, an alien unlawfully in this country, or the like)? We hold
that the word “knowingly” applies both to the defendant’s conduct
and to the defendant’s status. To convict a defendant, the
Government therefore must show that the defendant knew he
possessed a firearm and also that he knew he had the relevant status
when he possessed it.

1 Id. Rehaif does not stand for the proposition that the government must prove the defendant
 2 knew his possession of the firearm was unlawful. Rehaif requires proof of the defendant's
 3 felonious status. So, in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the government
 4 must prove that (1) the defendant knew he possessed a firearm and that (2) he knew he belonged
 5 to the relevant category of persons barred from possessing a firearm. See id. at 2200. To hold
 6 otherwise would mean that pure ignorance of the United States Code was a sufficient defense.

7 The Supreme Court also recently held that “[i]n felon-in-possession cases, a Rehaif error is
 8 not a basis for plain-error relief unless the defendant first makes a sufficient argument or
 9 representation on appeal that he would have presented evidence at trial that he did not in fact
 10 know he was a felon.” Greer v. United States, 141 S. Ct. 2090, 2093 (2021). The Court held that
 11 the defendants in that case must have shown that had the Rehaif errors been correctly advised,
 12 there was a “reasonable possibility” they would been acquitted or not have plead guilty. Id. The
 13 Court held that it was unlikely they would have carried that burden because both had been
 14 convicted of multiple felonies before and those “prior convictions are substantial evidence that
 15 they knew they were felons.” Id. The Court also rejected the argument that a Rehaif error is a
 16 structural one that requires automatic vacatur and held that “Rehaif errors fit comfortably within
 17 the ‘general rule’ that ‘a constitutional error does not automatically require reversal of a
 18 conviction.’” Id., quoting Arizona v. Fulminante, 499 U.S. 279, 306 (1991).

19 II. Analysis

20 Seawright asserts that in light of Rehaif, his sentence is unconstitutional and must be
 21 remanded because (1) the indictment failed to allege a cognizable crime against the United States
 22 and therefore stripped the Court of jurisdiction; (2) the grand jury was not required to find
 23 probable cause as per the defective indictment which violated his Fifth Amendment rights; and
 24 (3) Seawright was not informed of the nature and cause of the accusation which violated his
 25 Sixth Amendment rights. (#31, at 13-14).

26 The government pointed the Court to the Supreme Court’s decision in Greer and the Ninth
 27 Circuit’s orders consistently denying certificates of appealability to defendant’s challenging this
 28 Court’s denial of Rehaif-based § 2255 motions. (#55 at 3).

1 **A. Jurisdiction**

2 Seawright argues that his indictment failed to describe the criminal conduct as per Rehaif,
 3 which constitutes a fatal defect and deprived the Court of jurisdiction. (#54, at 14). However, the
 4 Ninth Circuit has ruled on this identical argument, holding that “the indictment’s omission of the
 5 knowledge of status requirement did not deprive the district court of jurisdiction.” United States
 6 v. Espinoza, 816 Fed. Appx. 82, 84 (9th Cir. 2020). “The Supreme Court has explicitly rejected
 7 ‘the view that indictment omissions deprive a court of jurisdiction...’ and this holding applies
 8 where ‘an indictment fails to allege the specific intent required’ for a crime[.]” Id., quoting
 9 United States v. Cotton, 535 U.S. 625, 631 (2002), United States v. Velasco-Medina, 205 F.3d
 10 839, 845-46 (9th Cir. 2002). Therefore, the Court rejects Seawright’s argument that this Court
 11 lacked jurisdiction.

12 **B. Fifth Amendment Rights**

13 Seawright also argues that because of the insufficient indictment, his Fifth Amendment rights
 14 were violated, and his sentence should be vacated. (#54, at 14). “The Fifth Amendment’s grand
 15 jury requirement establishes the ‘substantial right to be tried only on charges presented in an
 16 indictment returned by a grand jury.’” United States v. Davis, 854 F.3d 601, 603 (9th Cir. 2017),
 17 quoting United States v. Antonakeas, 255 F.3d 714, 721 (9th Cir. 2001). Seawright asserts that
 18 the failure to include the Rehaif elements “impermissibly allow[ed] conviction on a charge never
 19 considered by the grand jury” and that he should not have been tried based off this faulty
 20 indictment. (#54, at 18). He also argues that this was a structural error that does not require a
 21 showing of prejudice. Id. at 19.

22 “In this circuit an indictment missing an essential element that is properly challenged before
 23 trial *must* be dismissed.” United States v. Qazi, 975 F.3d 989, 991 (9th Cir. 2020). Seawright has
 24 not presented any evidence that he properly challenged his indictment before trial. Further, the
 25 Supreme Court has held that a Rehaif error is not a structural one, so Seawright must show actual
 26 prejudice. In Greer, the Court explained that “[s]tructural errors are errors that affect the ‘entire
 27 conduct of the [proceeding] from beginning to end” and consist of things like “the denial of
 28 counsel of choice, denial of self-representation, denial of a public trial, and failure to convey to a

1 jury that guilt must be proved beyond a reasonable doubt.” Greer, 141 S. Ct., at 2100. There, the
 2 Court held that “the omission of a single element from jury instructions or the omission of a
 3 required warning from a Rule 11 plea colloquy—are not structural because they do not
 4 ‘necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining
 5 guilt or innocence.” Id., quoting Neder v. United States, 527 U.S. 1, 9 (1999). The Court finds
 6 that here, the omission of the Rehaif requirement in the indictment does not amount to a
 7 structural error because it did not render Seawright’s legal proceedings fundamentally unfair or
 8 an unreliable vehicle for him deciding to plead guilty. As noted in Greer, “[i]f a person is a felon,
 9 he ordinarily knows he is a felon.” Greer, 141 S. Ct., at 2097. “Felony status is simply not the
 10 kind of thing that one forgets.” Id., quoting United States v. Gary, 963 F.3d 420, 423 (4th Cir.
 11 2020). Seawright has not made an argument that he did not know he was a felon, nor has he
 12 made a sufficient argument that the indictment truly did infect the entire judicial proceeding such
 13 that he would have changed his guilty plea.

14 **C. Sixth Amendment Rights**

15 Seawright makes a similar argument regarding his Sixth Amendment rights— that the
 16 indictment did not give him reasonable certainty of the nature of the accusation against him and
 17 that it inhibited his counsel’s ability to properly defend him. (#54, at 21-23). The Court does not
 18 find this convincing. Again, Seawright has not made any representations that he did not know of
 19 his felonious status at the time he possessed the gun, and he has not shown in any way that it
 20 affected his guilty plea. His signed plea agreement explicitly states that he was a previously
 21 convicted felon at the time he possessed the gun.

22 Seawright asserts this also was a structural error that entitles him to relief without showing
 23 prejudice. Id. at 22. However, as clarified in Greer and explained above, this was not a structural
 24 error. Seawright has been convicted of a felony before, which is strong evidence that he knew he
 25 was in the relevant category of persons prohibited from possessing a firearm. Further, the
 26 Supreme Court reasoned that when a defendant considers pleading guilty for this charge, he will
 27 usually recognize that as a felon, a jury would find he knew he was a felon when he possessed
 28 the gun and would likely factor that in when making the decision. Greer, 141 S. Ct., at 2097. “In

1 short, if a defendant was in fact a felon, it will be difficult for him to carry the burden on plain-
 2 error review of showing a ‘reasonable probability’ that, but for the Rehaif error, the outcome of
 3 the district court proceedings would have been different.” Id. Seawright has not made a showing
 4 that his Sixth Amendment rights were violated because of the Rehaif error, and as per Greer, his
 5 sentence will not be vacated.

6 III. Certificate of Appealability

7 Finally, the Court must deny a certificate of appealability. To proceed with an appeal,
 8 petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P.
 9 22(b); 9th Cir. R. 22-1; Allen v. Ornoski, 435 F.3d 946, 950-951 (9th Cir. 2006); *see also* United
 10 States v. Mikels, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make “a
 11 substantial showing of the denial of a constitutional right” to warrant a certificate of
 12 appealability. Id.; 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).
 13 “The petitioner must demonstrate that reasonable jurists would find the district court's
 14 assessment of the constitutional claims debatable or wrong.” Id. (*quoting* Slack, 529 U.S. at 484).
 15 To meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues are
 16 debatable among jurists of reason; that a court could resolve the issues differently; or that the
 17 questions are adequate to deserve encouragement to proceed further. Id. Seawright has not met
 18 his burden in demonstrating that there was any reasonable probability that he did not know that
 19 he was a felon and, therefore, prohibited from possessing a firearm.

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